

8535-4\MMC

UNITED STATES DISTRICT COURT
SUPREME COURT OF THE STATE OF NEW YORK

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MELINDA THEW COOPER,

Plaintiff,

-against-

LARRY THEW; JOHN THEW; LARRY THEW, as Executor of the Estate of Richard Thew; JOHN THEW, as Executor of the Estate of Richard Thew; LARRY THEW, as successor co-trustee of the Gerald Thew Family Trust; JOHN THEW, as successor co-trustee of the Gerald Thew Family Trust; LARRY THEW as co-trustee of the R.W. Thew Trust a/k/a the R.W. Thew Irrevocable Living Trust; JOHN THEW, as co-trustee of the R.W. Thew Trust a/k/a the R.W. Thew Irrevocable Living Trust; THE CURRY FAMILY PARTNERSHIP; TACONIC 82, INC.; LARRY THEW, as an officer and/or director of TACONIC 82, INC.; JOHN THEW, as an officer and/or director of TACONIC 82, INC.; REED SMITH, LLP; STEPHEN P. O'HARE, ESQ.; WILLIAM J. O'HARE, ESQ.; O'HARE & O'HARE, P.C.; MICHELE THEW; and PATRICIA CARSON,

Defendants.
-----X

**AFFIDAVIT OF RICHARD
R. DuVALL IN
OPPOSITION TO MOTION
BY JOHN THEW, LARRY
THEW, MICHELE THEW,
AND TACONIC 82, INC. TO
DISMISS THE
COMPLAINT**

04 CV 8928

Assigned Magistrate:
Hon. Colleen McMahon,
USDJ

STATE OF NEW YORK)
) SS.:
COUNTY OF DUTCHESS)

Richard R. DuVall being duly sworn, deposes and says:

1. I am a member of the law firm of McCabe & Mack LLP, attorneys for plaintiff in the above referenced matter.
2. Except where otherwise indicated, I make this affidavit of my own personal knowledge based upon my review of the documents annexed hereto.
3. Attached hereto as Exhibit "1" is a true and accurate copy of a Decision and Order dated October 28, 2004 of Hon. James D. Pagones, Dutchess County Surrogate's Court.
4. Attached hereto as Exhibit "2" is a true and accurate copy of the Declaration of Trust of the Gerald Thew Family Trust, dated April 1, 1994.
5. Attached hereto as Exhibit "3" is a true and accurate copy of a Deed dated April 1, 1994, recorded November 13, 1996 in Liber 1986 of Deeds at Page 452 in the

Dutchess County Clerk's Office, purporting to fund the Gerald Thew Family Trust with, at a minimum, several hundred acres of real estate.

6. Attached hereto as Exhibit "4" is a true and accurate copy of a Trust document dated May 17, 2002, the "R.W. Thew Irrevocable Living Trust".

7. Attached hereto as Exhibits "5", "6", and "7" are true and accurate copies of three Deeds dated May 17, 2002, purporting to convey approximately 124 acres of real property from the Gerald Thew Family Trust, for no consideration.

8. Attached hereto as Exhibit "8" is a true and accurate copy of a deed, dated May 29, 2002, purporting to convey property from the Gerald Thew Family Trust to Larry and Michele Thew for no consideration.

9. Attached hereto as Exhibit "9" is a true and accurate copy of Deed purporting to convey approximately 128 acres from the Gerald Thew Family Trust to the "R.W. Thew Trust".

10. Attached hereto as Exhibit "10" is a true and accurate copy of an Affirmation of William Bagliebter, dated August 25, 2004 and filed in Dutchess County Surrogate's Court.

11. Attached hereto as Exhibit "11" is a true and accurate copy of a Deed purporting to convey the Thew Orchard from the R.W. Thew Trust to Richard Thew as Trustee of the Thew Family Trust.

12. Attached hereto as Exhibit "12" is a true and accurate copy of a Deed purporting to convey the Thew Orchard from Richard Thew as Trustee of the Thew Family Trust to the Curry Family Partnership.

13. Attached hereto as Exhibit "13" is a true and accurate copy of a closing statement provided by Reed Smith from the sale of the Orchard Property to the Curry Family Partnership.

14. Attached hereto as Exhibit "14" is a true and accurate copy of two pages from Reed Smith's escrow account reports, provided to this office by Reed Smith.

15. All of the annexed are either publicly filed documents, similar to the documents

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annexed to the affidavit of Kathryn Beller submitted in support of defendants' motion, or expressly described in or attached to the complaint.

I declare the foregoing to be true and correct under pains and penalties of perjury.

DATED: Poughkeepsie, New York
February 2, 2005

RICHARD R. DuVALL (RRD-8967)

TO: Kathryn Beller, Esq.
Kurzman, Eisenberg, Corbin, Lever
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Thomas Halley, Esq.
Attorney for Remaining Defendants
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EXHIBIT LIST

- Exhibit 1 - Pagones' Decision and Order
- Exhibit 2 - Gerald Thew Family Trust Declaration of Trust
- Exhibit 3 - Deed (Gerald Thew to Trust) dated 4/1/94, recorded 1996
- Exhibit 4 - RW Thew Irrevocable Living Trust Declaration of Trust
- Exhibit 5 - Deed 5/17/02 Doc # 2002-7542
- Exhibit 6 - Deed 5/17/02 Doc # 2002-7543
- Exhibit 7 - Deed 5/17/02 Doc # 2002-7552
- Exhibit 8 - Deed 5/29/02 Doc # 2003-3563
- Exhibit 9 - Deed 4/1/03 Doc # 2003-4641
- Exhibit 10 - Affirmation of Bagliebter
- Exhibit 11 - Deed 12/19/03, Doc # 2003 10736
- Exhibit 12 - Deed 12/19/03 Doc # 2003-10738
- Exhibit 13 - Closing Statement
- Exhibit 14 - Reed Smith Escrow Accounting